

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 28, 2005 at 9:03 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 282, SB 264, 1/24/2005
Executive Action: SB 104

HEARING ON SB 282**Opening Statement by Sponsor:**

SEN. FRANK SMITH, SD 16, POPLAR, opened the hearing on **SB 282**, Revise racial profiling law. **SEN. SMITH** said that SB 282 was a bill to close the loopholes in the racial profiling bill that had been passed last session. He then walked the Committee through SB 282 and pointed out the changes that had been made.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General with the Department of Justice on behalf of Attorney General Mike McGrath, explained the history of the legislation. She went on to discuss the implementation of racial profile classes at the Police Academy, and what those classes entail. **Ms. Bucy** stated that the problem was that only basic officers were receiving the training, therefore, they needed to implement a program to provide the training for those officers already on the job. She expressed full support for SB 282. She concluded by saying that the number one way to stop racial profiling was to have departmental policies that require one hundred percent investigations of complaints and that require response to citizen complaints.

Jim Kembel, Montana Association of Chiefs of Police, expressed their concerns that racial profiling training had not been implemented statewide. He stated that his organization stood in full support of SB 282.

Bob Worthington, Administrator, Montana Municipal Insurance Authority, talked about the need for racial profiling policies and the importance of education. He explained that SB 282 set standards for all law enforcement to follow. **Mr. Worthington** commented on the fact that it was a difficult issue to deal with because of the variances in the size of the law enforcement departments across Montana.

Jerry Williams, Montana Police Protective Association, expressed strong support for SB 282.

Terry Kendrick representing the Montana Human Rights Network, urged the Committee to support SB 282.

Opponents' Testimony: None.

Informational Testimony: None.

SEN. PEASE arrived at the hearing on SB 282.

Questions from Committee Members and Responses:

SEN. MANGAN asked **Ms. Bucy** how many communities had not implemented the racial profiling policy. **Ms. Bucy** replied that she did not know what the number was. She went on to say that they were currently conducting an audit.

SEN. MANGAN told **Ms. Bucy** that he did not think that a \$500 fine was a big deal and asked if they would consider a higher penalty for noncompliance. **Ms. Bucy** indicated that they had considered a higher penalty. She went on to say that she felt the program had not been implemented because of a lack of knowledge and lack of incentive to do so.

SEN. MANGAN asked **Ms. Bucy** what the time frame for the review process would be. He further asked if it would take 30 days, 60 days or 90 days to review the complaints. **Ms. Bucy** indicated that they had not discussed the deadline for a response to the written complaint. She went on to say that she hesitated to put in a deadline because some investigations could take longer because of the complexity of the case.

SEN. SHOCKLEY asked **Ms. Bucy** to address the issue of fining police departments. **Ms. Bucy** indicated that if the cases were litigated, police departments would have to pay.

SEN. SHOCKLEY indicated to **Ms. Bucy** that there was some incongruity with the Government fining a local agency and asked if this was going a step too far. **Ms. Bucy** responded that she felt it was a policy debate that would have to be wrestled with because she did not feel that it went too far.

SEN. SHOCKLEY asked **SEN. SMITH** if he was comfortable with the state government fining a local government \$500. **SEN. SMITH** responded that it was a way of getting the local government's attention. He went on to say that the fine did not have to be \$500, it could be any amount.

SEN. O'NEIL asked **SEN. SMITH** what the circumstances would be to create a particularized suspicion. **SEN. SMITH** replied that it was covered under the civil rights program.

SEN. O'NEIL asked **SEN. SMITH** if there was a cost for the racial profiling training. **SEN. SMITH** responded that the training was built into the budget for the academy.

CHAIRMAN WHEAT asked **Mr. Worthington** if there was a way to increase insurance rates for those communities that do not comply with the training requirements. **Mr. Worthington** explained that the MMIA was a self insurance organization, therefore, it would not work to have punitive or incentive programs.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 27.2}

CHAIRMAN WHEAT asked **Ms. Bucy** what would happen to an agency that did not adopt the racial profiling policy. He further asked if her office would file an action in the local municipal court and ask that a fine be imposed. **Ms. Bucy** replied that a suit would be filed and a fine would be imposed. She went on to say that they hoped they would be able to bring everyone into compliance simply with the pressure of a fine being imposed for noncompliance.

SEN. ELLINGSON left the hearing.

CHAIRMAN WHEAT asked **Ms. Bucy** if they wanted the Legislature to give them a hammer that they would probably never use. **Ms. Bucy** stated that they would use it if necessary.

SEN. MCGEE asked **Ms. Bucy** if they were going to ignore racial or ethnic status in relation to possible terrorists crossing the border. **Ms. Bucy** replied that they were not going to do that. She further stated that they had been very careful in crafting the definition. She continued saying that they had used the same language as almost every other state with more onerous definitions. **Ms. Bucy** indicated that was the reason that they had used the language, that it could not be the sole factor for stopping someone.

SEN. MCGEE asked **Ms. Bucy** to explain to him how she would word it if she was putting a call out to be on alert for Muslim extremists trying to cross the border into Montana. **Ms. Bucy** responded that they would use the federally disseminated profiles. She went on to say that there would be a description of a vehicle, description of some type of activity, description of the individual, and it would be more detailed than the individual looking Muslim.

SEN. SHOCKLEY asked **Ms. Bucy** if the standard for examining someone at a border or military installation was different than once that individual was inside of the border. **Ms. Bucy** stated that a whole different set of laws applied, rather than the state profiling laws.

Closing by Sponsor:

SEN. SMITH explained how he had gotten started on SB 282. **SEN. SMITH** provided a letter to the Committee from **REP. JUNEAU** in support of SB 282, and is attached as Exhibit 1. **SEN. SMITH** read **REP. JUNEAU'S** letter into the record. **SEN. SMITH** informed the Committee that the incident in this letter was the reason he had included in SB 282 that the complaint had to be in writing. He went on to say that because there had not been a written complaint he had not been able to verify whether or not the incident in question had ever really happened. He concluded by asking for a do pass.

EXHIBIT(jus22a01)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11}

HEARING ON SB 264**Opening Statement by Sponsor:**

SEN. FRANK SMITH (D), SD 16, POPLAR, opened the hearing on **SB 264**, Prohibit arrest quotas for peace officers. **SEN. SMITH** remarked that during his research he had found a town that paid their officers according to the amount of tickets they wrote. He went on to say that this was the reason he had brought SB 261 forward, to get the quota system out of law enforcement. He concluded by asking the Committee for a do pass on SB 264.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked **SEN. SMITH** if this bill was inadvertently telling the Highway Patrol not to make traffic stops for speeding in some way. **SEN. SMITH** replied that it could be. He continued by reading a copy of the minutes from a December meeting that was held in the Helena area.

CHAIRMAN WHEAT asked **SEN. SMITH** where the minutes had come from. **SEN. SMITH** responded that the minutes were from the December meeting of the Montana Highway Patrol.

SEN. CROMLEY asked **SEN. SMITH** why there were no proponents or opponents for the bill. **SEN. SMITH** stated that the Peace Officers Association had indicated that they were going to be present, however, after meeting with the Highway Patrol they decided not to. He went on to say that there were three highway patrolmen who had brought the situation to his attention to begin with.

SEN. PEASE asked **SEN. SMITH** if he knew if there was a time frame for when quotas were being conducted, such as, beginning of the month, middle of the month or end of the month. **SEN. SMITH** replied that he did not know if there was or was not a time frame.

SEN. SHOCKLEY asked **SEN. SMITH** if he would provide a copy of the minutes to the Committee so that it could be entered on the record. **SEN. SMITH** replied that he would. A copy of the minutes from the Highway Patrol meeting was distributed to the Committee and is attached as Exhibit 2.

EXHIBIT(jus22a02)

SEN. PERRY asked **SEN. SMITH** if, in his opinion, justice could be served by quotas. **SEN. SMITH** replied that he had been in law enforcement for seven years and had never had a quota. He went on to say that they were graded once a month on their work, their personality, their appearance, as well as their tickets.

Closing by Sponsor:

SEN. SMITH closed by asking for a do pass.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 18.3}

EXECUTIVE ACTION ON SB 104

Motion: **SEN. SHOCKLEY** moved that SB 104 DO PASS.

Amendment SB010401.avl was handed out and is attached as Exhibit 3.

EXHIBIT(jus22a03)

Motion: **SEN. LASLOVICH** moved that AMENDMENT NO. SB010401.AVL BE ADOPTED.

SEN. LASLOVICH explained the amendment.

Brenda Nordlund, Department of Justice, addressed the first three amendments on Amendment No. SB010401.avl and explained that they addressed the problem with the number of individuals allowed in the front seat of a pickup truck.

Vote: Motion that AMENDMENT NO. SB010401.AVL BE ADOPTED carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.

Motion: SEN. LASLOVICH moved that SB 104 DO PASS AS AMENDED.

Motion: SEN. MCGEE moved that AMENDMENT NO. SB010402.AVL BE ADOPTED.

SEN. MCGEE explained this amendment. Amendment No. SB010402.avl is attached as Exhibit 4.

EXHIBIT(jus22a04)

Motion: SEN. LASLOVICH moved to segregate sections 1 and 5 of Amendment No. SB010402.avl.

Discussion:

SEN. LASLOVICH indicated that he was segregating sections 1 and 5 because he liked what SEN. MCGEE was doing with those sections. He went on to say that he had concerns with the rest of the sections on the amendment.

SEN. MCGEE stated that what he was suggesting with his amendment was, for whatever reason that a young person might be out after 11:00 o'clock p.m. or before 5:00 o'clock a.m., that if the parent had given their permission it should be enough. He went on to say that he did not think that the only parent should be the State.

SEN. CROMLEY stated that he felt there was merit in the amendment. He went on to say that the Constitution stated that person 18 years of age and older were considered adults in every area except for being able to consume alcohol. He further indicated that because of the legal age being 18 there could be a problem with using the age of 19 in this case.

Motion: SEN. PERRY made a substitute motion to lower the age from 19 to 18 years of age in section 5 of Amendment No. SB010402.avl.

SEN. MCGEE indicated that he agreed with the proposed substitute motion.

Vote: Motion that the Substitute Motion to lower the age to 18 on Section 5 of AMENDMENT NO. SB010401.AVL BE ADOPTED carried 11-1 by voice vote with **SEN. MANGAN** voting no and **SEN. ELLINGSON** voting aye by proxy.

CHAIRMAN WHEAT asked if there was further discussion on the motion to adopt sections 1 and 5 of Amendment No. SB010401.avl.

SEN. CROMLEY asked for clarification.

Vote: Motion that segregated sections 1 and 5 of AMENDMENT NO. SB010401.AVL BE ADOPTED carried 11-1 by voice vote with **SEN. MANGAN** voting no and **SEN. ELLINGSON** voting aye by proxy.

Motion: **SEN. MCGEE** moved that SB 104 DO PASS AS AMENDED.

Motion: **SEN. MCGEE** moved that sections 2, 3 and 4 of AMENDMENT NO. SB010402.AVL BE ADOPTED.

Motion: **SEN. O'NEIL** moved to segregate section 4 of AMENDMENT NO. SB010402.AVL.

Discussion:

SEN. O'NEIL stated that he believed that a person should be driving with the flow of the traffic. He went on to say that if a person was driving 55 miles per hour on the freeway it could be dangerous.

SEN. MCGEE provided several examples of incidents that could occur that he felt a novice driver would not be able to handle at 75 miles per hour.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 27.3}

SEN. SHOCKLEY asked **SEN. MCGEE** how they were going to enforce novice drivers driving no more than 55 miles per hour. **SEN. MCGEE** stated that he agreed it would be a problem. He went on to say that he did not know how they were going to enforce any aspect of the bill.

SEN. PEASE asked **Valencia Lane** if he knew if there was a minimum speed limit on the Interstates in statute. **Ms. Lane** responded that she did not believe there was a minimum speed.

SEN. CROMLEY indicated that he agreed with **SEN. O'NEIL** that slow moving vehicles were a hazard on the highways.

SEN. PERRY stated that he agreed with **SEN. CROMLEY** and **SEN. O'NEIL**. He went on to say that there already was a restriction period in the bill and that limitations on speed could be set by the individual who was supervising the novice driver.

CHAIRMAN WHEAT indicated that he did not allow his 17-year-old son to drive on the freeway because it was too dangerous and his son does not have the driving skills to do so.

Vote: Motion that segregated section 4 of **AMENDMENT NO. SB010402.AVL** BE ADOPTED failed 10-2 by voice vote with **SEN. MCGEE** and **SEN. CURTISS** voting aye and **SEN. ELLINGSON** voting no by proxy.

CHAIRMAN WHEAT stated that they were now back on sections 2 and 3 of Amendment SB010402.avl.

SEN. MCGEE reminded the Committee that section 2 was a structural amendment with no substance, therefore, what they were really looking at was section 3 of the amendment. He went on to explain how this section would impact the bill.

SEN. SHOCKLEY asked **SEN. MCGEE** if he envisioned the permission to be in writing. **SEN. MCGEE** replied that he did envision the permission to be in writing even if he had not said so.

Motion/Vote: **SEN. SHOCKLEY** made a substitute motion to amend section 3 of **AMENDMENT NO. SB010402.AVL** by inserting the word "written" after the word "the". Motion carried unanimously by voice vote with **SEN. ELLINGSON** voting aye by proxy.

CHAIRMAN WHEAT indicated that they were back on sections 2 and 3, as amended, of Amendment No. SB010402.avl.

SEN. MANGAN stated that there was no reason for a child to be driving between the hours of 11 p.m. and 5 a.m. He further indicated that he liked the bill as it was.

SEN. CROMLEY indicated that he agreed with **SEN. MANGAN**. He went on to say that he felt that the amendment was gutting the entire bill.

SEN. O'NEIL asked **SEN. MCGEE** if the amendment would allow a child to drive with a car full of kids. **SEN. MCGEE** replied that it would not.

SEN. O'NEIL asked **SEN. MCGEE** if the amendment would allow a child to drive without going through driver's education. **SEN. MCGEE** indicated that it would not.

SEN. LASLOVICH expressed his opposition to the amendments. He continued by saying that he felt the amendments defeated the purpose of the bill by giving the individuals a "get out of jail free" card.

SEN. MCGEE stated that he did not think it was the sponsor's intent to create a bill which would completely exclude parents from having a say-so with regard to what happens with their children. He went on to say that he did not believe that the vast majority of parents would say that they did not care what the law said, and would give their children a permission slip to do whatever they wanted.

Vote: Motion that segregated sections 2 and 3 of AMENDMENT NO. SB010402.AVL BE ADOPTED failed 4-8 by roll call vote with **SEN. O'NEIL**, **SEN. SHOCKLEY**, **SEN. MCGEE** and **SEN. CURTISS** voting aye and **SEN. ELLINGSON** voting no by proxy.

Motion: **SEN. CROMLEY** moved that SB 104 DO PASS AS AMENDED.

Motion: **SEN. CURTISS** moved that AMENDMENT NO. SB010403.AVL BE ADOPTED.

A copy of Amendment No. SB010403.avl was provided to the Committee and is attached as Exhibit 5.

EXHIBIT(jus22a05)

Discussion:

SEN. CURTISS explained the purpose of the amendment.

CHAIRMAN WHEAT asked **Ms. Lane** for clarification of the amendment. **Ms. Lane** stated that this amendment would make sure that home schoolers would be able to take advantage of the driving programs and thereby not be excluded because they do not attend a public school. She further stated that it was her understanding that the Justice Department did not object to the amendment.

SEN. PERRY expressed his strong support for the amendment.

SEN. SHOCKLEY stated that he did not feel there was anyone who would not want young drivers properly educated in how to drive.

Vote: Motion that AMENDMENT NO. SB010403.AVL BE ADOPTED carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.

Motion: SEN. LASLOVICH moved that SB 104 DO PASS AS AMENDED.

SEN. LASLOVICH informed the Committee that he had another amendment. This amendment was distributed to the Committee and is attached as Exhibit 6.

EXHIBIT(jus22a06)

Motion: SEN. LASLOVICH moved that AMENDMENT NO. SB010404.AVL BE ADOPTED.

SEN. LASLOVICH explained that this amendment would exempt students enrolled in the Job Corps Program from the requirements of SB 104.

SEN. CROMLEY asked SEN. LASLOVICH what the Job Corps age requirements were. SEN. LASLOVICH answered that he did not know what the specific requirements were.

SEN. CROMLEY stated that he had concerns with the amendment, therefore, he would not be able to vote for it.

SEN. LASLOVICH explained that the students he had spoken with did already have their drivers' licenses. However, there were students that did not, and those were the ones he was trying to help.

SEN. SHOCKLEY stated that he believed that if the students had licenses from other states they would not be good after 30 days, and they would have to then obtain a Montana driver's license.

Ms. Nordlund indicated that she felt that it was 120 days before anyone moving to the state would have to obtain a Montana driver's license.

SEN. PERRY expressed opposition to the amendment.

SEN. MANGAN stated that he was going to support the amendment. He went on to say that he worked with these kids and had referred a number of kids to the Job Corps Program. He continued saying that many of the kids involved in the program would have a hard time finding a parent that could or would certify that they had completed the required time with a supervised driver.

SEN. MOSS asked **SEN. GILLAN** if other states had addressed this issue. **SEN. GILLAN** responded that she was not aware if there were other states that had the same issue. **SEN. GILLAN** referred the question to **Brenda Nordlund**. **Ms. Nordlund** indicated that they had sent out an e-mail to the American Association of Motor Vehicle Administrator Yahoo Group on driver's licensing and had not received a response that stated that there were explicit Job Corps exceptions in other programs.

SEN. MCGEE expressed his concerns regarding the proposed exception being made for a government program.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 26.8}

SEN. MANGAN stated that this amendment was not trying to do the same thing that **SEN. MCGEE'S** amendment was trying to do.

CHAIRMAN WHEAT referred to Section 3 and asked **SEN. LASLOVICH** if they needed to change his amendment to conform with the previously adopted amendment by lowering the supervising driver's age to 18 from 21.

Motion/Vote: **CHAIRMAN WHEAT** moved that 21 be changed to 18 in section 5 of Amendment No. SB010404.avl. Motion carried unanimously by voice vote with **SEN. ELLINGSON** voting aye by proxy.

SEN. LASLOVICH closed on his amendment.

Vote: Motion that AMENDMENT NO. SB010404.AVL BE ADOPTED AS AMENDED carried 8-4 by roll call vote with **SEN. CROMLEY**, **SEN. CURTISS**, **SEN. O'NEIL**, and **SEN. PERRY** voting no with **SEN. ELLINGSON** voting aye by proxy.

Motion: **SEN. SHOCKLEY** moved that SB 104 DO PASS AS AMENDED.

Discussion:

SEN. SHOCKLEY stated that he was going to vote for the bill.

SEN. O'NEIL proposed a conceptual amendment on Page 2, Line 12, to strike subsection a. **SEN. O'NEIL** explained that he wanted to strike this section because there were already seatbelt laws in other parts of the statute. He went on to say that this bill was putting in a primary seatbelt law for someone who might look like they were under the age of 18.

SEN. CROMLEY and **SEN. LASLOVICH** discussed the proposed amendment and the previous amendment.

SEN. SHOCKLEY indicated that he would support the conceptual amendment.

Motion/Vote: **SEN. O'NEIL** moved that **CONCEPTUAL AMENDMENT TO SB 104 BE ADOPTED**. Motion failed 4-8 by roll call vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, and **SEN. SHOCKLEY** voting aye and **SEN. ELLINGSON** voting no by proxy.

Motion/Vote: **SEN. SHOCKLEY** moved that **SB 104 DO PASS AS AMENDED**. Motion carried unanimously with **SEN. ELLINGSON** voting aye by proxy.

ADJOURNMENT

Adjournment: 10:53 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus22aad0.TIF](#))